

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

PUGET SOUNDKEEPER ALLIANCE *et al.*,

Plaintiffs,

v.

ANDREW WHEELER, in his official capacity  
as Acting Administrator of the United States  
Environmental Protection Agency, and R.D.  
JAMES, in his official capacity as Secretary of  
the Army for Civil Works,

Defendants.

CASE NO. C15-1342-JCC

ORDER

This matter comes before the Court *sua sponte*. The Court set forth the underlying facts of this case in prior orders and will restate only those relevant here. (*See* Dkt. No. 61.) In 2015, the U.S. Army Corps of Engineers (the “Corps”) and the Environmental Protection Agency (the “EPA”) (collectively, the “Agencies”) issued a final rule defining the jurisdictional scope of the CWA. Clean Water Rule: Definition of “Waters of the United States,” 80 Fed. Reg. 37,054 (June 29, 2015) (to be codified at 33 C.F.R. pt. 328) (the “2015 Rule”). In May 2018, Plaintiffs filed a first amended and supplemental complaint for declaratory and injunctive relief. (*See* Dkt. No. 33.) Plaintiffs challenged the 2015 Rule and a final rule that would add an applicability date to the 2015 Rule (the “Applicability Date Rule”). In an order granting in part and denying in part Plaintiffs’ motion for partial summary judgment and Defendants’ cross-motion for summary

1 judgment regarding the Applicability Date Rule, the Court vacated the Applicability Date Rule  
2 nationwide, thereby leaving only Plaintiffs' challenges to the 2015 Rule. (*See* Dkt. No. 61.)

3 On September 13, 2019, Defendants filed a notice of final rule. (Dkt. No. 97.)  
4 Defendants state that on September 12, 2019, the Administrator of the EPA and the Assistant  
5 Secretary of the Corps signed a final rule that "(1) rescinds the regulation at issue in this matter,  
6 the [2015 Rule]; and (2) re-codifies the prior regulatory definition of 'waters of the United  
7 States,' as informed by applicable agency guidance documents and consistent with Supreme  
8 Court decisions and longstanding practice." (*Id.* at 2.) The notice states that "[t]he rule will be  
9 published in the Federal Register and will be effective 60 days thereafter." (*Id.*)

10 Having considered the notice of final rule and relevant record, the Court hereby  
11 ORDERS the parties to show cause as to why this matter will not be moot once the final rule  
12 rescinding the 2015 Rule becomes effective. Briefs shall not exceed five pages in length and  
13 shall be filed no later than October 18, 2019. The Clerk is DIRECTED to renote Plaintiffs'  
14 motion for summary judgment (Dkt. No. 67), Intervenor's cross-motion and response (Dkt. No.  
15 72), and Defendants' cross-motion and response (Dkt. No. 79) to October 18, 2019.

16 DATED this 8th day of October 2019.

17  
18  
19 

20 John C. Coughenour  
21 UNITED STATES DISTRICT JUDGE  
22  
23  
24  
25  
26